



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XC040]

Marine Mammals; File No. 26394

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Pangolin Pictures, 1650 Broadway, Suite 1208, New York, NY 10019 (Responsible Party: Kevin Bachar), has applied in due form for a permit to conduct commercial and educational photography on humpback whales (*Megaptera novaeangliae*) and other cetaceans.

DATES: Written, telefaxed, or e-mail comments must be received on or before

[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: These documents are available upon written request via email to *NMFS.Pr1Comments@noaa.gov*.

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov*. Please include File No. 26394 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov*. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubbard or Amy Hapeman, (301) 427-8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film up to 75 humpback whales in the Au'au channel in Hawai'i. Filming would take place from onboard a boat, using underwater divers, and from an unmanned aircraft system. Other species that would be filmed if encountered are up to 150 bottlenose dolphins (*Tursiops truncatus*), 50 pantropical spotted dolphins (*Stenella attenuata*), 250 spinner dolphins (*S. longirostris*), 50 melon-headed whales (*Peponocephala electra*), 50 pygmy killer whales (*Feresa attenuata*), and 10 minke whales (*Balaenoptera acutorostrata*). Footage would be used for a documentary to air on National Geographic Television. The permit would be valid from December 2022 through May 2023.

It has come to the agency's attention that the 2016 interim final humpback approach rule (50 CFR 216.19; 81 FR 62010, September 8, 2016) does not explicitly exempt permits issued under section 104(c)(6) of the MMPA from its prohibitions. It is not the agency's intent to preclude the issuance of permits or authorizations consistent with the requirements of the MMPA. We interpret the rule to allow issuance of these permits. Consistent with this interpretation, it has been our practice to continue to issue section 104(c)(6) permits that are in compliance with the MMPA's requirements and our review procedures, as evidenced by issuance of four such permits since the rule's effective date. However, to eliminate any potential ambiguity, we intend to revise the rule to explicitly clarify that photography permits issued under section 104(c)(6) of the MMPA are exempt from the prohibitions on approach.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is

categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 18, 2022.

Amy Sloan,

Acting Chief, Permits and Conservation Division,

Office of Protected Resources,

National Marine Fisheries Service.

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